

## REMARKS

Claims 1-30, and 48-62 are currently pending. All stand rejected. The applicants request further examination and reconsideration in view of the remarks set forth below.

### Rejections under 35 U.S.C. § 103(a):

The examiner has rejected claims 1-30 and 48-62 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Number 6,450,639 issued to Abraham (hereinafter referred to as "Abraham") in view of U.S. Patent Application Publication Number 2004/0017540 filed by Matera (hereinafter referred to as "Matera").

The examiner has stated that Abraham discloses in figures 1 and 2 eyewear comprising: a frame having a brow web 112 extending approximately horizontally from a top portion of the frame, the eyewear includes ventilation apertures 122 or spacer members 16 for preventing fogging of lenses. The examiner also stated that Abraham does not disclose the blockage of light from entering through the apertures. In addition, the examiner stated that Matera discloses anti-fogging eyewear wherein the apertures formed on the top portion of the frame have an internal side that is substantially sloped with respect to the top surface of the frame. The examiner further stated that it would have been obvious at the time the invention was made for a person skilled in this art to modify the eyewear in the Abraham reference in light of Matera's teachings by forming ventilation apertures having an internal side that is substantially sloped with respect to the top surface of brow web for blocking light from entering through the apertures as discussed by Matera in the same manner as the applicant does.

The applicants respectfully traverse this rejection. The present invention is directed towards providing light-blocking air vents for eyewear. An embodiment of the present invention includes a frame for the eyewear having a brow web that extends approximately horizontally from a top portion of the frame. The brow web includes at least one ventilation aperture having an internal side that is substantially sloped with respect to a top surface of the brow web. Applicants' specification, page 2, lines 6-9.

As is stated in the Manual of Patent Examining Procedure (MPEP):

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the

art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

MPEP at section 7060.2(j) (Eighth Edition Revision 2). The applicants respectfully submit that the rejected claims are allowable at least because the cited references separately or in combination do not teach or suggest all of the limitations recited in the claims. Further, there is not a motivation to modify the references to encompass the limitations recited in the claims.

Abraham is directed towards fog-free protective glasses, goggles and non-protective glasses. Abraham, Title. Abraham discloses eyewear that includes a brow web extending approximately horizontally from a top portion of eyewear. See Abraham, Figure 1. Spacer members are attached to the frame and provide spaces for air to circulate in the eye area of the eyewear. Abraham, column 6, lines 51-53. Abraham also discloses eyewear that includes apertures in the forward facing portion of the eyewear. See Abraham, Figure 2.

Matera is directed towards anti-fogging sport glasses. Matera, Title. The sport glasses include an upper lens rim that extends rearwardly towards the eye and that defines a plurality of apertures. Matera, paragraph 22, lines 1-7. The apertures are arranged in a substantially vertical angle approximately 70-90° with the horizontal viewing angle. Matera, paragraph 24, lines 9-11.

The present invention as recited in claim 1 is directed towards eyewear comprising a frame having a brow web extending approximately horizontally from a top portion of the frame and one or more lenses mounted to the frame. The brow web includes at least one ventilation aperture having an internal side that is substantially sloped with respect to a top surface of the brow web.

The examiner has asserted that Matera discloses eyewear with apertures having an internal side that is substantially sloped. The applicants respectfully disagree with this assertion. Rather, Matera clearly discloses apertures with a substantially vertical orientation of 70-90°. Matera, paragraph 24, lines 9-11. Apertures with a substantially vertical orientation do not encompass and, thus, do not teach or suggest apertures which are substantially sloped. By comparing the applicants' figure 3, which shows an embodiment of a substantially sloped internal side as represented by angle A, to Matera's figure 8, which shows the substantially vertical arrangement of the apertures is represented by angle  $\theta$  relative to reference line H<sub>2</sub>, the

differences can be readily be observed. In addition, there is no motivation in Matera or Abraham for someone skilled in the art to modify Matera to encompass the features recited in claim 1. For at least these reasons, claim 1 is allowable.

Claims 1-18 are allowable at least because they are dependent upon allowable base claim 1. Claims 19 and 48 are allowable for at least the same reasons as claim 1. Claims 20-30 and 49 are allowable at least because they are dependent from either allowable base claim 19 or allowable base claim 48.

Claim 50 recites eyewear including a frame with at least one ventilation aperture. The eyewear includes a brow web extending approximately horizontally from a top portion of the frame, and the ventilation aperture extends through the brow web. The brow web includes a top surface that is substantially horizontal while being worn. An angle separating the top surface and the internal side is approximately forty-five degrees or less. The eyewear includes one or more lenses mounted to the frame.

Claim 50 is patentably distinguishable from Matera and Abraham either separately or in combination. The examiner has given no evidence to show where either Matera or Abraham disclose apertures having an angle separating the top surface of the brow web and the internal side of an aperture is approximately forty-five degrees or less. In contrast, Matera discloses apertures with a substantially vertical orientation of 70-90°. Matera, paragraph 24, lines 9-11. The range of 70-90 degrees does not include forty-five degrees, is not abutting forty-five degrees and is nowhere near forty-five degrees. Forty-five degrees is twenty-five degrees less than seventy degrees, while the total range of angles disclosed by Matera is only twenty degrees. Any assertion that it would have been obvious to modify Matera to achieve the applicants' invention would imply that Matera's disclosure of limitations on the orientation of the apertures is without impact or meaning. Thus, it would not have been obvious to a person skilled in the art to modify Matera by more than doubling the range of angles disclosed by Matera. Moreover, the examiner has given no motivation for a person skilled in the art to modify Matera. Thus, neither Abraham nor Matera suggest or disclose all the features recited in claim 50. For at least this reason claim 50 is allowable.

Claim 51-62 are allowable at least because they are dependent from allowable base claim 50.

In view of the above, the applicants respectfully submit that all of the pending claims are now allowable. Allowance at an early date would be greatly appreciated. Should any issues remain, the examiner is encouraged to telephone the undersigned at (408) 293-9000 to discuss the same so that any outstanding issues may be expeditiously resolved.

Law Offices of Derek J. Westberg

Dated: Jan. 18, 2005

A handwritten signature in black ink, appearing to read 'Derek J. Westberg', is written over a horizontal line.

Derek J. WESTBERG (Reg. No. 40,872)